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6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 **JOE FLORES, an individual, and**
10 **CONNIE FLORES, an individual,**

11 **Plaintiffs,**

12 **v.**

13 **EMERICH & FIKE, a professional**
14 **corporation, et al.,**
15 **Defendants.**

) **1: 05 - CV - 0291 AWI DLB**
)
)

) **ORDER VACATING DECEMBER 3,**
) **2007 HEARING DATE**
)

) **ORDER GIVING DEFENDANTS**
) **UNTIL DECEMBER 10, 2007 TO FILE**
) **REPLY BRIEFS**
)

16 **BACKGROUND**

17 The complex history of this case, and its related two cases, is well known to the parties
18 and will not be restated here. In short, this case – the third in a series of lawsuits – was filed
19 against attorneys who had represented corporate defendants in the first case and individuals
20 alleged to be the alter egos and/or otherwise in control of the now defunct corporate defendants.

21 On October 9, 2007, Plaintiffs filed an amended complaint in this action.

22 On October 24, 2007, Hagobian Defendants filed a motion to dismiss the amended
23 complaint.¹ Yeramian Defendants and Russell Davidson joined in this motion. The motion
24 was set to be heard for oral argument on December 3, 2007.

25 On November 21, 2007, Plaintiffs filed timely oppositions to the motion to dismiss,
26 which do not include a proof of service on Defendants. On November 26, 2007, Plaintiffs filed

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¹ There appears to be some confusion over whether this motion was timely. Pursuant to Rule 12, a motion or answer should be filed within twenty days.

late supplemental oppositions, stating that Plaintiffs had inadvertently failed to oppose some of the motion to dismiss's contentions in the earlier oppositions.

On November 26, 2007, Hagobian Defendants filed a reply in which they claim they did not receive the any of the oppositions until November 26, 2007.

DISCUSSION AND ORDER

All parties have asked the court not to consider certain filings by the other side because they were not properly served and filed. It is this court's policy to attempt to resolve disputes based on the merits and not to grant and deny motions based on the procedural shortcomings of any oppositions. At this time it appears all parties are in physical possession of the motion and oppositions, including the supplemental oppositions. In the interests of justice, Defendants will be given further opportunity to file a reply to the oppositions and supplemental oppositions.

Permission to file any other brief, such as sur-replies, is not given, and such briefs will be stricken from the record.

Further, the court has reviewed the moving papers and oppositions and has determined that this motion is suitable for decision without oral argument. Local Rule 78-230(h).

Accordingly, the court ORDERS that:

1. The previously set hearing date of December 3, 2007 is VACATED;
2. Defendants may file any reply brief by December 10, 2007; and
3. As of December 10, 2007, the court will take the motion under submission, and will thereafter issue its decision.

IT IS SO ORDERED.

Dated: November 29, 2007

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE